



February 14, 2001

Mr. Robert J. Davis
Matthews, Carlton, Stein, Shiels, Pearce, Dunn & Knott, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2001-0559

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144184.

The City of Mabank (the "city"), which you represent, received a request for the following information:

- 1) All records of disciplinary action(s) filed on Officer Timothy Joe Redford badge #467;¹
- 2) All complaints filed against Officer Redford by citizens and/or other officers; and
- 3) All incident reports from all closed cases involving Officer Redford arresting individuals for suspicion of Driving While Intoxicated or Driving Under the Influence prior to July 23, 2000 dating as far back as 5 years.

¹You inform us that there are no records of disciplinary actions against Officer Redford. You have submitted several commendations and performance evaluations, attached as Exhibit 4, which you believe may be responsive to the request.

You claim that the requested information is excepted from disclosure under sections 552.107(1) and 552.108(a)(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You explain that the requestor is a criminal suspect in a pending Driving While Intoxicated ("DWI") case. You argue that release of the requested information could be used as impeachment information about Officer Redford which could possibly be used to thwart the prosecution of the requestor. We do not, however, believe that you have demonstrated how or why the requested information should be withheld under section 552.108. *See, e.g.,* Open Records Decision Nos. 553 (1990), 413 (1984), 143 (1976), 127 (1976); *cf.* Open Records Decision Nos. 216 (1978), 133 (1976) (release of routine personnel information generally does not interfere with law enforcement and crime prevention).

Regarding the commendations and performance evaluations in Exhibit 4, you have not explained how or why release of those documents would interfere with the detection, investigation, or prosecution of crime. Therefore, you may not withhold them under section 552.108(a)(1) of the Government Code. The documents in Exhibit 5, which are responsive to request item number two, merely reveal information pertaining to the personnel matters of an individual officer. Such information only indirectly "deals with the detection, investigation, or prosecution of crime" and more directly deals with personnel matters. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from investigation of police officer for alleged misconduct, section 552.108 is inapplicable); Open Records Decision No. 350 (1982). Therefore, you may not withhold the documents in Exhibit 5 under section 552.108(a)(1) of the Government Code. Finally, with regard to the police reports in Exhibit 6, you have not stated that the submitted reports pertain to ongoing criminal investigations or prosecutions, nor have you otherwise explained how their release would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code

²In response to request item number three, you have submitted a representative sample of records. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§ 552.108(a)(1). Therefore, you may not withhold the police reports in Exhibit 6 under section 552.108(a)(1) of the Government Code.

You claim that the requested information is excepted from disclosure under section 552.107(1). Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). You have failed to demonstrate, nor do the documents show on their face, that they contain information that reflects confidential attorney-client communications or an attorney's legal advice or opinions. Therefore, you may not withhold the requested information under section 552.107(1).

We note that some of the submitted records contain information that must be withheld under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold all Texas driver's license numbers, vehicle identification numbers, and license plate numbers that appear in the requested reports under section 552.130. We have marked a representative sample of those pieces of information for your convenience.

We also note that social security numbers appear in the submitted records. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you

should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you may not withhold the requested information under section 552.108(a)(1) because you have failed to reasonably explain how and why the release of the information would interfere with law enforcement. You may not withhold the requested information under section 552.107(1) because you have failed to demonstrate that the requested records contain information that reflects confidential attorney-client communications or an attorney's legal advice or opinions. You must withhold all Texas driver's license numbers, vehicle identification numbers, and license plate numbers that appear in the reports under section 552.130. The social security numbers that appear in the reports may be confidential under 1990 amendments to the federal Social Security Act. You must release all of the remaining information that is responsive to the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

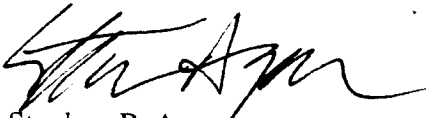
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen P. Agan', is written over the typed name.

Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 144184

Encl. Submitted documents

cc: Mr. Darin P. Smith
702 Cypress Drive
Allen, Texas 75002
(w/o enclosures)